

SETTLEMENT AGREEMENT

Whereas, on April 24, 2017, Young America’s Foundation and Berkeley College Republicans (“Plaintiffs”) filed a Complaint against Janet Napolitano, Nicholas B. Dirks, Stephen C. Sutton, Joseph D. Greenwell, Margo Bennett, Alex Yao, and Leroy M. Harris in the United States District Court for the Northern District of California (case No. 3:17-cv-02255-MMC);

Whereas, on November 10, 2017, after the Court granted a motion to dismiss the Complaint with leave to amend, Plaintiffs filed a First Amended Complaint against Janet Napolitano Nicholas B. Dirks, Carol T. Christ, Stephen C. Sutton, Joseph D. Greenwell, Margo Bennett, Alex Yao, and Leroy M. Harris (collectively “Defendants”);

Whereas, Plaintiffs alleged in their First Amended Complaint that Defendants had violated Plaintiffs’ rights under the First Amendment, the Due Process Clause, and the Equal Protection Clause in its handling of conservative speaker events planned by Plaintiffs on the University of California, Berkeley (“UC Berkeley”) campus;

Whereas Defendants filed a motion to dismiss Plaintiffs’ First Amended Complaint, arguing that Plaintiffs had not alleged a violation of any constitutional rights with respect to events that Plaintiffs had planned or attempted to plan in the past, and that UC Berkeley’s new Major Events Policy was constitutional;

Whereas, on April 25, 2018, the United States District Court for the Northern District of California (“the Court”) granted in part and denied in part Defendants’ motion to dismiss;

Whereas on March 6, 2018, the Court ordered Plaintiffs and Defendants (collectively, “the Parties”) to engage in settlement discussions with Magistrate Judge Jacqueline Scott Corley;

Whereas the Parties attended settlement conferences with Magistrate Judge Corley on June 5, 2018 and August 21, 2018;

Whereas Defendants deny many of Plaintiffs' factual allegations and all of Plaintiffs' allegations of unlawful conduct and deny that Plaintiffs are entitled to either damages or equitable relief on the claims asserted in the Complaint or First Amended Complaint;

IT IS HEREBY AGREED by and between Plaintiffs on the one hand, and Defendants, on the other hand, as set forth below:

I. The Nature of This Settlement Agreement.

This Settlement Agreement and all associated exhibits or attachments ("Settlement Agreement") is made for the sole purpose of attempting to consummate settlement of *Young America's Foundation, et al. v. Janet Napolitano, et al.*, 3:17-cv-02255-MMC, United States District Court for the Northern District of California ("the Litigation").

Defendants deny all of Plaintiffs' allegations of unlawful conduct and deny that Plaintiffs are entitled to either damages or equitable relief on the claims asserted in the Complaint or First Amended Complaint. Defendants have agreed to resolve the Litigation by this Settlement Agreement; but, to the extent this Settlement Agreement is deemed void or for any reason does not take effect, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Litigation upon all procedural and factual grounds, and to assert any and all defenses or privileges. Plaintiffs and Plaintiffs' Counsel agree that Defendants retain and reserve these rights.

Plaintiffs reiterate their position that Defendants unlawfully discriminate against conservative speech.

II. The Parties to this Settlement Agreement.

This Settlement Agreement (with the associated exhibits) is made and entered into by and among the following Settling Parties: (i) Plaintiffs, with the assistance and approval of Plaintiffs' Counsel; and (ii) Defendants, with the assistance of their counsel of record. The Settlement Agreement is intended by the Settling Parties to result in final

resolution of the Litigation and to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof.

III. Terms of Settlement Agreement.

1. Definitions.

As used in all parts of this Settlement Agreement (including the exhibits which are part of the Settlement Agreement), the following terms have the meanings specified below:

1.1 The “Litigation” shall mean case 3:17-cv-02255-MMC in the United States District Court for the Northern District of California.

1.2 “Regents Releasees” means The Regents of the University of California (“The Regents”), Members of the Board of Regents, and officers, agents, employees, attorneys, accountants or auditors, associates, and personal or legal representatives of The Regents, as well as all subparts of the University of California, such as the University of California, Berkeley.

1.3 “Released Claims” shall collectively mean all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever under state or federal law including without limitation statutory, constitutional, contractual, or common law claims, whether known or unknown, including without limitation claims for actual damages, nominal damages, unpaid costs, penalties, punitive damages, interest, attorneys’ fees, litigation costs, injunctive relief, declaratory relief, or other equitable relief, against the Regents Releasees, relating to any and all allegations and/or claims that have been or could have been asserted in the Litigation; provided, however, that Plaintiffs do not release any claim against the Regents Releasees arising at University of California campuses other than UC Berkeley.

1.4 “Settlement Agreement” means this agreement and all of its exhibits, which the Parties understand and agree sets forth all material terms and conditions of the settlement between them.

2. Settlement Measures:

2.1 During the review of the Major Events Policy currently planned for October 2018, the UC Berkeley Office of Risk Services will recommend that the Major Events Policy be amended as provided in Exhibit A. These proposals will be considered in good faith by UC Berkeley as part of the standard review process, potentially along with other proposals made by others. Plaintiffs and Defendants agree to seek a stay of the Litigation pending this review process. If the proposed changes shown in Exhibit A are ultimately not adopted by UC Berkeley in substantial part, then Plaintiffs shall have the sole option to terminate this Settlement Agreement by providing written notice to Defendants 72 hours in advance of termination. If Plaintiffs exercise this option, the Settlement Agreement shall be deemed null and void, and Plaintiffs shall be entitled to pursue the Litigation in ordinary course, and neither party will have the rights or obligations provided in this Settlement Agreement, as if this Settlement Agreement had never been entered into.

2.2 At the conclusion of the 2018-2019 academic year, UC Berkeley will publish on its website a report identifying (1) all events during the academic year designated as Major Events under the Major Events Policy, (2) the total fees paid to UC Berkeley, the University of California Police Department, or any subdivisions thereof, in relation to each such event, and (3) all reservations made by Registered Student Organizations during the academic year for events with 100 attendees or more in UC Berkeley classrooms or venues controlled by the ASUC Student Union.

2.3 Magistrate Judge Corley will be available to the Parties to facilitate discussions of any issues that may arise between them with respect to events that Plaintiffs attempt to plan in the future.

2.4 Within 30 days after the dismissal of the Litigation, Defendants will make a one-time payment of \$70,000 to Plaintiffs to compensate them for attorney's fees incurred in the Litigation. By agreeing to make this payment, Defendants in no way admit that Plaintiffs are or would be a prevailing party in the Litigation.

2.5 Following the signing of this Settlement Agreement, and within 7 days of the Major Events Policy being amended in the manner specified by section 2.2 above, Plaintiffs will file a notice with the United States District Court for the Northern District of California dismissing the Litigation with prejudice in light of the Parties' settlement.

2.6 Beginning in the Spring 2019 academic semester, UC Berkeley will adopt the security fee schedule attached here as Exhibit B. The security fee amounts set forth therein shall not be increased for at least a period of three (3) years following the adoption of the fee schedule. For avoidance of doubt, that the standard recharge rates for UCPD services may be increased during that period based on salary and benefit increases, as provided in footnote 5 of Exhibit B.

3. Releases.

3.1 In consideration for Defendants' and The Regents' agreement to undertake the "Settlement Measures" listed in sections 2.1 through 2.4 above, on behalf of themselves, their employees, members, officers, directors, agents, heirs, executors, administrators, and assigns, Plaintiffs, to the fullest extent permitted by law, agree to forever unconditionally and irrevocably release, acquit, and discharge, and by operation of the signing of this Settlement Agreement shall have, fully, finally, and forever released, acquitted, and discharged all Released Claims.

3.2 Plaintiffs expressly waive any and all rights under Section 1542 of the Civil Code of the State of California, and any like or comparable provision or principle of common law in any other jurisdiction. Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Thus, notwithstanding the provisions of Section 1542 or any other provision of law with a comparable effect, and for the purpose of implementing a full and complete release and discharges, Plaintiffs expressly acknowledge that this Agreement is intended to include in its

effect, without limitation, claims and causes of action which they do not know of or suspect to exist in their favor at the time of execution hereof and that this Agreement contemplates extinguishment of all such claims and causes of action.

4. Miscellaneous Provisions.

4.1 Neither the Settlement Agreement, nor any act performed or document executed pursuant to, or in furtherance of, the Settlement Agreement: (a) is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claim or of any wrongdoing or liability on the part of any Defendant, the Regents Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission or evidence of any fault or omission of any Defendant, the Regents Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

4.2 All of the exhibits to the Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

4.3 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

4.4 The Settlement Agreement constitutes the entire agreement among the Parties hereto and no representations, warranties, or inducements have been made to any party concerning the Settlement Agreement or its exhibits other than the representations, warranties, and covenants expressly contained and memorialized in such documents.

4.5 Each Party shall bear its own costs.

4.6 Plaintiffs each specifically acknowledge the following:

(a) An authorized representative of each possesses sufficient education and experience to fully understand the terms of this Settlement Agreement as it has been written, the legal and binding effect of the Settlement Agreement, and the exchange of benefits and promises herein.

(b) An authorized representative of each has read this Settlement Agreement fully and completely and understands its significance.

(c) No inducements, statements, or representations have been made that are not set out expressly in this Settlement Agreement, and Plaintiffs do not rely on any inducements, statements, or representations not set forth expressly herein.

(d) Each enters into this Settlement Agreement knowingly and voluntarily and of their own free will and choice.

(e) Each has been encouraged and given the opportunity to consult with an attorney of their choice, which each has done.

4.7 Each counsel or other person executing the Settlement Agreement or any of its exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

4.8 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. If the Settlement Agreement is filed with the Court, a complete set of executed counterparts shall be filed.

4.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto; however, this Settlement Agreement is not designed to and does not create any third-party beneficiaries unless otherwise specifically so provided herein.

4.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to

the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

4.11 The Settlement Agreement and the exhibits hereto shall be considered to have been negotiated, executed and delivered, and to have been wholly performed, in the State of California, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State's choice-of-law principles.

4.12 The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Settlement Agreement. The parties acknowledge that the terms of the Settlement Agreement are contractual and are the product of negotiations between the parties and their respective counsel. All parties and their counsel cooperated in the drafting and preparation of the Settlement Agreement. In any construction to be made of the Settlement Agreement, the Settlement Agreement shall not be construed against any party and the canon of contract interpretation set forth in California Civil Code section 1654 shall not be applied.

4.13 Should any provision of this Settlement Agreement or any action taken pursuant to this Settlement Agreement be declared or be determined by any Court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, and this Settlement Agreement is AGREED TO:

DATED: _____, 2018

By: _____
PATRICK COYLE

For: Plaintiff Young America's Foundation

DATED: _____, 2018

By: _____
MATTHIAS RONNAU

For: Plaintiff Berkeley College Republicans

DATED: _____, 2018

By: _____
MARGARET L. WU

For: The Regents of the University of California

DATED: _____, 2018

By: _____
JANET NAPOLITANO

DATED: _____, 2018

By: _____
NICHOLAS B. DIRKS

DATED: _____, 2018

By: _____
CAROL T. CHRIST

DATED: _____, 2018

By: _____
JOSEPH D. GREENWELL

DATED: _____, 2018

By: _____
STEPHEN C. SUTTON

DATED: _____, 2018

By: _____
MARGO BENNETT

DATED: _____, 2018

By: _____
ALEX YAO

DATED: _____, 2018

By: _____
LEROY M. HARRIS

APPROVED AS TO FORM

DATED: November ____, 2018

DHILLON LAW GROUP, INC.
HARMEET K. DHILLON
KRISTA L. BAUGHMAN
GREGORY R. MICHAEL

By: _____

Attorney for Plaintiffs

DATED: November ____, 2018

MUNGER, TOLLES & OLSON LLP
BRYAN H. HECKENLIVELY
ELIZABETH A. KIM

By: _____

Attorney for Defendants